159 U.S. 680, 682

RECORD, CASE No. 15,343.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., ~~959~~. 944 246

DANIEL A. BUCKLIN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED JULY 3, 1893.

RECORD, CASE No. 15,343.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 959.

DANIEL A. BUCKLIN, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

INDEX.

	Original.	Print.
Order to docket indictments	1	1
Indictment	2	1
Capias	12	6
Marshal's return	13	6
Bond for appearance, filed December 5, 1892	14	7
Arraignment and plea	16	8
Order beginning trial	16	8
Order continuing trial	17	8
Order entering verdict	18	9
Verdict	19	9
Motion to set aside verdict and grant new trial	21	9
Affidavit of Daniel A. Bucklin	22	10
Letter from M. A. P. Swacker to Mr. Bucklin, May 9, 1891	24	11
Bond for appearance, filed March 13, 1893	25	11
Capias	27	13
Marshal's return	28	13
Motion in arrest of judgment	29	13
Order overruling motions for new trial and in arrest of judgment	30	14

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 18, 1893.

	Original.	Print.
Judgment and sentence	30	14
Bond for appearance, filed April 8, 1893	31	14
Order to correct record	33	16
Bill of exceptions	36	17
Evidence for the Government	37	17
Admission as to register of land office at Larned	37	18
Certified copy of record from General Land Office in case of Bucklin *vs.* Swacker	38	18
Testimony of Thomas M. Bucklin	41	19
George Elder	50	23
Daniel A. Bucklin	54	25
Testimony of M. A. P. Swacker	59	27
Mart. Hoagland	63	28
Samuel Demerett	64	28
—— Hudlow	65	29
B. F. Macklin	66	29
Elias Kile	67	29
B. A. Merrill	68	30
James Kile	69	30
Pat. Gillespie	70	30
Burt Woodruff	71	30
J. W. Swacker	72	31
Evidence for defendant	73	31
Testimony of George Elder	73	31
Thomas Bucklin	74	31
Daniel Bucklin	76	32
Motion to set aside verdict and grant new trial	78	33
Affidavit of Daniel A. Bucklin	80	34
Letter of M. A. P. Swacker to Mr. Bucklin, May 9, 1891	82	34
Motion in arrest of judgment	84	35
Judgment and sentence	86	35
Judge's certificate to bill of exceptions	90	36
Consent as to bill of exceptions	91	37
Assignment of errors	93	37
Petition for appeal	95	38
Assignment of errors	97	39
Bond on appeal	99	40
Order allowing appeal, &c	102	41
Clerk's certificate	104	42

1 Be it remembered that at the September term, A. D. 1892, of the district court of the United States for the district of Kansas, second division, the following proceedings were had and appear of record in Journal A of said court, at page 57:

THURSDAY, *September* 22, 1892.

Now come the grand jurors into open court and through their foreman present the following bills of indictment, which indictments being filed by the clerk, it is ordered by the court that said indictments be docketed by the clerk and that capias issue against the defendants, returnable forthwith. Ordered that the U. S. attorney be authorized to endorse additional names of witnesses on said indictments.

THE UNITED STATES, Plaintiff, *vs.* DANIEL A. BUCKLIN, Defendant. } = 63. Perjury.

2 THE UNITED STATES OF AMERICA, *District of Kansas*, } *ss.*:

In the District Court of the said United States in and for the Second Division of the said District, September Term, 1892.

THE UNITED STATES OF AMERICA *vs.* DANIEL A. BUCKLIN (Whose More Full Christian Name is Unknown). } Indictment for Violation of Section 5392, Revised Statutes of the United States.

At the term of the district court of the United States of America in and for the second division of said district of Kansas, begun and held at Wichita, in the second division of said district, on the twelfth day of September, in the year of our Lord one thousand eight hundred and ninety-two, the grand jurors of the United States of America, duly impaneled, sworn, and charged to inquire of offenses committed within the second division of the district of Kansas, upon their oaths do find and present that Daniel A. Bucklin (whose more full Christian name is to the grand jurors aforesaid unknown), late of the second division of the district of Kansas aforesaid, on or about the 26th day of February, in the year of our Lord one thousand eight hundred and ninety-two, at the second division of the district of Kansas aforesaid and within the jurisdiction of this court, then and there being desirous of contesting a certain timber-culture entry before that time made and entered in the United States land office at Wichita, in the second
3 division of the district of Kansas, by one Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, upon the southwest quarter of section eight, in township twenty-three south, of range four west, of the sixth principal meridian, in Reno county, Kansas, he, the said Daniel A. Bucklin, did then and there present himself in his own proper person before one H. P. Wolcott, he, the

said H. P. Wolcott, being then and there the duly appointed, qualified, and acting register of the United States land office at Larned, in the second division of the district of Kansas, and he, the said Daniel A. Bucklin, did then and there testify as a witness in behalf of the right of the said Daniel A. Bucklin to contest the timber-culture entry of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, as aforesaid; and he, the said Daniel A. Bucklin, did then and there appear in his own proper person before the said H. P. Wolcott, register as aforesaid, he, the said H. P. Wolcott, being then and there the duly appointed, qualified, and acting register of said land office at Larned, Kansas, by authority of and in conformity with law and then and there duly authorized and empowered by the laws of the United States and the regulations issued from the General Land Office of the United States to administer oaths in connection with the right of contest in timber-culture entries pending in the land offices of the United States and the right of contest of the said Daniel A. Bucklin to the timber-culture entry as aforesaid, and then and there duly authorized by law to administer an oath to the said Daniel A. Bucklin and to take the
4 testimony which he, the said Daniel A. Bucklin, should give and in support of the right of the said Daniel A. Bucklin to contest the timber-culture entry of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, as aforesaid, which testimony by him, the said Daniel A. Bucklin, to be given was material to the question to be determined by said land office and its officers, the register and receiver thereof, and to the right of him, the said Daniel A. Bucklin, to enter a contest to the timber-culture entry of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, as aforesaid; and thereupon, upon the said 26th day of February, 1892, the said Daniel A. Bucklin appeared as a witness in behalf and to support the right of the said Daniel A. Bucklin to enter a contest to the timber-culture entry of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, as aforesaid, and was then and there duly sworn and took his corporal oath in conformity with law before him, the said H. P. Wolcott, register as aforesaid, that the evidence which he, the said Daniel A. Bucklin, should give before him, the said H. P. Wolcott, register as aforesaid, touching the right of him, the said Daniel A. Bucklin, to enter a contest upon said timber-culture entry of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, to be the truth, the whole truth, and nothing but the truth, he, the said H. P. Wolcott, register as aforesaid, then and there having sufficient and competent authority to administer said oath to the said Daniel A. Bucklin in that behalf.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that in order to entitle the said
5 Daniel A. Bucklin to contest the timber-culture entry of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, it became and was necessary and material that the said Daniel A. Bucklin should establish to the satisfaction of the register and receiver of said land office so as aforesaid located at Larned,

being the land district in which said land was then located, that the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, had failed to break or plow or cause to be broken or plowed five acres of the land above described the first year of her, the said Margueriete A. P. De Lagntry'-, now Margueriete A. P. Swacker's, entry; that within the second year of her, the said Margueriete A. P. De Lagntry'-, now Margueriete A. P. Swacker's, entry, she, the said Margueriete A. P. De Langtry, now Margueriete A. P. Swacker, failed to break or plow or cause to be broken or plowed five acres of the tract of land above described and had failed to cultivate to crop or otherwise five acres of said tract; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, failed to cultivate to crop or otherwise five acres of said land and failed to plant trees, timber, seeds, or cuttings during the third year of her, the said Margueriete A. P. De Lagntry'-, now Margueriete A. P. Swacker's, entry; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, failed during the fourth year of her, the said Margueriete A. P. De Lagntry'-, now Margueriete A. P. Swacker'-, entry to plant timber, trees, seeds, or cuttings on five acres of said land or any part thereof; that she, the said Margueriete A. P. De Lagntry,
6 now Margueriete A. P. Swacker, failed to plant trees, seeds, or cuttings or timber on said land during the fifth year of her, the said Margueriete A. P. De Lagntry'-, now Margueriete A. P. Swacker's, entry; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, failed the sixth year of her, the said Margueriete A. P. De Lagntry'-, now Margueriete A. P. Swacker'-, entry of said land to plant the requisite number of trees, timber, and cuttings thereon and to cultivate said trees; that no preparation of the ground (meaning thereby the land above described) and planting of trees, seeds, or cuttings has been done on the land above described since 1889; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, had offered to sell or trade said tract, and that he; the said Daniel A. Bucklin, believed she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, had abandoned said land long prior to the 14th day of January, 1892, and that it should be made to appear affirmatively that the statements contained in a certain affidavit then and there made by said Daniel A. Bucklin were true.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that the said Daniel A. Bucklin, being so sworn as aforesaid, contriving and intending to pervert the due course of law and unjustly, unlawfully, and wrongfully to enter a contest to the timber-culture entry of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, as aforesaid, on the 26th day of February, 1892, at the town of Larned, in Pawnee county, in said second division of the district of Kansas, upon his
7 oath aforesaid, falsely, knowingly, wilfully, and feloniously, before the said H. P. Wolcott, register as aforesaid, did depose and swear, among other things, in substance that the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, failed to break or plow or cause to be broken or plowed five acres of

the land above described the first year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry; that within the second year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry she, the said Marguerietc A. P. Swacker, failed to break or plow or cause to be broken or plowed five acres of the tract of land above described and had failed to cultivate to crop or otherwise five acres of said tract above described; that she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, failed to cultivate to crop or otherwise five acres of said land and failed to plant trees, timber, seeds, or cuttings during the third year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry; that she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, failed during the fourth year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry to plant timber, trees, seeds, or cuttings on five acres of said land or any part thereof; that she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, failed to plant trees, seeds or cuttings, or timber on said land during the fifth year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry; that she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker,

8 failed the sixth year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry of said land to plant the requisite number of trees, timber, and cuttings thereon and to cultivate said trees; that no preparation of the ground (meaning thereby the land above described) and planting of trees, seeds, or cuttings had been done on the land above described since 1889; that she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, had offered to sell or trade said tract of land above described, and that she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, had abandoned said land long prior to the 14th day of January, 1892, whereas in truth and in fact the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, had not failed to break or plow or caused to be broken or plowed five acres of the land above described the first year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry; that within the second year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, did not fail to break or plow or cause to be broken or plowed five acres of the tract of land above described and had not failed to cultivate to crop or otherwise five acres of said tract of land above described; that she, the said Marguerietc A. P. De Lagntry, now Marguerietc A. P. Swacker, had not failed to cultivate to crop or otherwise five acres of said land, and had not failed to plant trees, timber, seeds, or cuttings during the third year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry; that she, the said

9 Marguerietc A. P. De Lagntry, now Marguerite A. P. Swacker, did not fail during the fourth year of her, the said Marguerietc A. P. De Lagntry'-, now Marguerietc A. P. Swacker's, entry to

plant timber, trees, seeds, or cuttings on five acres of said land or any part thereof; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, did not fail to plant trees, seeds, or cuttings or timber on said land during the fifth year of her, the said Margueriete A. P. De Lagntry's, now Margueriete A. P. Swacker's, entry; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, did not fail the sixth year of her, the said Margueriete A. P. De Lagntry's, now Margueriete A. P. Swacker's, entry of said land to plant the requisite number of trees, timber, and cuttings thereon and to cultivate said trees; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, had made preparation of the ground (meaning thereby the land above described) and had made plantings of trees, seeds, or cuttings on the land above described, as required by law, since 1889; that she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, had not offered to sell or trade said tract of land above described, and whereas in truth and fact she, the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker, had not abandoned said land long prior to the 14th day of January, 1892.

All of which statements so falsely made as aforesaid were then and there embodied in a written deposition and testimony, which written deposition and testimony *was* then and there subscribed and sworn to by the said Daniel A. Bucklin before the said
10 H. P. Wolcott, register of the United States land office at Larned, Kansas, he, the said H. P. Wolcott, register as aforesaid, then and there having competent and full power to administer an oath in that behalf, and which written deposition and testimony, so subscribed and sworn to as aforesaid by the said Daniel A. Bucklin, he, the said Daniel A. Bucklin, then and there, and in accordance with the regulations and instructions of the Commissioner of the General Land Office, did cause the same to be filed in the United States land office at Larned, in the second division of the district of Kansas, for the purpose of securing to the said Daniel A. Bucklin the right to enter a contest to the timber-culture claim of the said Margueriete A. P. De Lagntry, now Margueriete A. P. Swacker.

And so the grand jurors aforesaid, upon their oaths aforesaid, do say that the said Daniel A. Bucklin, on the 26th day of February, 1892, at Larned, in the county of Pawnee, in the second division of the district of Kansas aforesaid, before the said H. P. Wolcott, register as aforesaid, he, the said H. P. Wolcott, register as aforesaid, then and there having such power and authority as aforesaid, by his own act and consent and of his own wicked and corrupt mind, in manner and form as aforesaid, falsely, wickedly, wilfully, knowingly, unlawfully, and feloniously did commit wilful and corrupt perjury, and did then and there, in manner and form and to the effect aforesaid, testify and swear that all the matters and things hereinbefore specified and set forth were true, when in truth and in fact he, the said Daniel A. Bucklin, did, not believe said
11 testimony as aforesaid by him given or any part of it to be true at the time he as aforesaid testified and gave it, and

when in truth and in fact said testimony and all of it was wholly false and untrue, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

P. L. SOPER,
Assistant United States Attorney for the District of Kansas.

Endorsed: No. 63. United States district court, second division. The United States *vs.* Daniel A. Bucklin. Perjury. A true bill. H. B. Kelly, foreman. Witnesses: Mrs. M. A. P. Swacker, H. P. Wolcott, Charlie Keil, Jim Keil, E. Keil. Filed September 22nd, 1892. J. C. Wilson, clerk, by J. E. Shearman, D. C.

12 THE UNITED STATES OF AMERICA, }
District of Kansas, Second Division, } *ss:*

The United States of America to the marshal of the district of Kansas, Greeting:

You are hereby commanded that you take Daniel A. Bucklin, if he shall be found in your district, and him safely keep, so that you may have his body before the district court of the United States of America for the district of Kansas, 2nd division, to be held in Wichita, in said district, before the judge of said court, on the 4th day of March next, to answer unto a certain indictment for perjury which has been returned against him unto our said court by the grand inquest of the United States in and for said district; and hereof fail not, and have you then and there this writ, with the return of your doings thereon.

Witness the Hon. C. G. Foster, judge of the said court, at
[SEAL.] Wichita, in the said district, this 28th day of November, A. D. 1892.

J. C. WILSON, *Clerk.*
By J. F. SHEARMAN, *Deputy Clerk.*

13 *U. S. Marshal's Return.*

DISTRICT OF KANSAS, *ss:*

Rec. this writ at Wichita, Dec. 1st, 1892, and served same at Reno county, Dec. 1st, 1892, by arresting the within-named Dan'l A. Bucklin and taking him to Wichita.

Service	2 00
Two meals	1 00
Transf. of pris. 59 miles	5 90
	$8 90

R. L. WALKER, *U. S. Marshal,*
By W. W. SPENCER, *Deputy.*

Endorsed: No. 63. District court United States, district of Kansas, second division. United States *vs.* Daniel A. Bucklin. Capias. Filed May 12th, 1893. J. C. Wilson, clerk. J. W. Ady, attorney for plaintiff.

14 UNITED STATES OF AMERICA, } *ss*:
District of Kansas, }

Know all men by these presents that Daniel A. Bucklin, as principal, and Mary Bucklin, as sure*ties*, are held and firmly bound unto the United States of America in the sum of three hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators.

The condition of the above bond is that whereas one Daniel A. Bucklin was, at the September term, A. D. 1892, of the United States district court for the district of Kansas, indicted for perjury, and the trial on said indictment continued to the March term of the United States district court for the district of Kansas, to be held on the first Monday in March, 1893:

Now, therefore, if the said Daniel A. Bucklin shall be and appear in his own proper person before the district court of the United States for the district of Kansas at the next term thereof, to be holden in the city of Wichita, in said district, on Monday, the 4th day of March, A. D. 1893, and not depart therefrom without leave of the said court first had and obtained, then this bond shall be null and void; otherwise to remain in full force and effect.

In witness whereof we have hereunto set our hands and seals this 2nd day of December, A. D. 1892.

DANIEL A. BUCKLIN. [SEAL.]
MARY BUCKLIN. [SEAL.]

Approved Dec. 5, 1892.
R. L. WALKER,
U. S. Marshal,
By DE BOST, *Deputy.*

15 UNITED STATES OF AMERICA, } *ss*:
District of Kansas, }

I, the undersigned, surety on the within undertaking, do solemnly swear that I am a resident of the State of Kansas, and that I am worth three hundred ($300.00) dollars over and above all exemptions, debts, and liabilities, consisting of money and bonds, so help me God.

MARY BUCKLIN.

Subscribed and sworn to before me this 3rd day of December, A. D. 1892.

[SEAL.] R. J. CANNELL,
Notary Public.

Com. expires Oct. 14th, 1894.

Endorsed: Case No. 63. The United States *vs.* D. A. Bucklin. Bond, $300.00, for appearance at March term of district court, A. D. 1893. Filed this 5th day of Dec., 1892. J. C. Wilson, clerk.

16 Be it remembered that at the March term, A. D. 1893, of the district court of the United States for the district of Kansas, second division, begun and held at Wichita, in said district and division, on Tuesday, the 7th day of March, A. D. 1893, the following proceedings, amongst others, were had and appear of record upon the journal of said court, as follows, to wit:

TUESDAY, *March 7th*, 1893.

UNITED STATES
vs.
DANIEL A. BUCKLIN. } No. 63. Perjury.

Now comes as well the United States, by J. W. Ady, United States attorney, and the defendant, Daniel A. Bucklin, in his own proper person and by his attorneys, Davidson and Williams; and the said defendant, being arraigned on the indictment herein, plead not guilty thereto, and to try the matters submitted to them in the above cause came a jury, to wit:

John L. Ely, John M. Rowell, John Ratliff, A. J. Thompson, Thos. Winn, John Ray, D. B. Long, A. H. Duff, Peter Herman, S. S. Rebstock, J. C. Gerrond, and Hiram Hitchcock, who being duly impaneled and sworn to try the issues joined, the trial of the cause is proceeded with.

The hour of adjournment having arrived and the jury not having reached a verdict, they are admonished of their duties by the court and further consideration of this cause is postponed until to-morrow.

17 And subsequently, at the same term of the said court, the following proceedings were had and appear of record in words and figures as follows, to wit:

WEDNESDAY, *March 8th*, 1893.

UNITED STATES
vs.
DANIEL A. BUCKLIN. } No. 63. Perjury.

Now come the parties same as before, and the jury heretofore impaneled herein, being called, answer to their names, and the trial of the cause is proceeded with; and the jury, having heard the evidence, arguments of counsel, and instructions of the court, retire with their sworn bailiff to consider of the matters submitted to them. The hour of adjournment having arrived and the jury not having reached a verdict, they are admonished of their duties by the court and retire with their sworn bailiff to continue their deliberations.

18 And subsequently, at the same term of said court, the following proceedings were had and appear of record in words and figures as follows, to wit:

SATURDAY, *March 11th*, 1893.

UNITED STATES
vs.
DANIEL A. BUCKLIN. } No. 63. Perjury.

Now, on this day, came the parties same as before; also the jury heretofore impaneled herein; and the said jury, being inquired of if they had agreed upon their verdict, answered they had, and thereupon returned into court the following verdict, to wit:

We, the jury in the above-entitled cause, duly impaneled and sworn, upon our oaths find the defendant, Daniel A. Bucklin, guilty as charged in the indictment.

D. B. LONG, *Foreman.*

19 In the District Court of the United States for the District of Kansas, Second Division.

UNITED STATES
vs.
DANIEL A. BUCKLIN. } No. 63.

We, the jury in the above-entitled cause, duly empaneled and sworn, upon our oaths find the defendant, Daniel A. Bucklin, guilty as charged in the indictment.

D. B. LONG, *Foreman.*

Endorsed: No. 63. The United States *vs.* Daniel A. Bucklin. Verdict. Filed M'ch 11th, 1893. J. C. Wilson, clerk, by J. F. Shearman, D. C.

20 In the District Court of the United States in and for the Second Division of the District of Kansas.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DANIEL A. BUCKLIN, Defendant.

Motion to Set Aside Verdict and Grant a New Trial.

Now comes the said defendant, Daniel A. Bucklin, by Davidson & Williams, his attorneys, and moves the court to set aside the verdict rendered in the above-entitled cause on the 11th day of March, 1893, and at the present term of this court, and grant the defendant herein a new trial, for the following reasons, to wit:

First. Because the verdict given in this case is against and contrary to the weight of evidence and the law of the case.

Second. Because the evidence in this case is at variance with the allegations in the indictment.

Third. Because of misconduct on the part of the jury which rendered the said verdict, in this, that three cases, viz., The United States *vs.* this defendant, The United States *vs.* Thomas Bucklin, and The United States *vs.* George Elder, were all tried at once and submitted

to the same jury for determination, and that said jury, after deliberating on all three of said cases from the 8th day of March, 1893, at 3 o'clock p. m. of that day, until 6 o'clock p. m. of the 11th day of March, 1893, brought in the said verdict of "guilty"
21 against this defendant, and that the same was arrived at by said jury as a compromise and settlement of all three of said cases, and was not a determination by said jury of the above-entitled cause upon its merits.

Fourth. On account of newly discovered evidence, which has been discovered since the trial of the above cause, as shown by the affidavits hereto attached, marked "Exhibit A," and made a part hereof, and which evidence the said defendant could not with reasonable diligence have discovered before the trial of said cause.

Fifth. Because the defendant in this action was surprised by the testimony of the witnesses for the prosecution wherein they testified that there was twelve acres of growing trees upon the contested claim testified about in this case; that the said evidence being against the facts, this defendant had no means of knowing nor was he informed that the said witnesses would so testify; that if a rehearing is had in this case the said defendant can satisfy this court by overwhelming testimony, as is shown by the affidavit hereto attached, marked "Exhibit B," that the said testimony in that respect of the witnesses for the prosecution was untrue and false.

DAVIDSON & WILLIAMS,
Attorneys for Defendant.

Endorsed: United States of A. *vs.* Daniel A. Bucklin. Motion for new trial. Filed M'ch 13, 1893. J. C. Wilson, cl'k.

22 In the United States District Court, in the Second Division of the District of Kansas.

UNITED STATES, Pl'ff,)
vs.) Affidavit.
DANIEL BUCKLIN, D'f't.)

STATE OF KANSAS,)
County of Sedgwick,) *ss:*

Daniel A. Bucklin, of lawful age, being sworn, on his oath says *says* that the letter hereto attached and dated May 9th, 1891, and which letter is made a part of this affidavit, is in the handwriting and over the signature of M. A. P. Swacker, and was by her written to Thomas Bucklin, the father of this affiant; that the reference in said letter to "bargains" refers to the sale of the improvements and interest of said Swacker in a timber claim, being the S. W. ¼ of sec. 8, t'w'p 23, R. 4, in Reno county, Kansas, to this affiant; that at the trial of the above cause said affiant did not know of the existence of said letter and was surprised at the testimony of said Swacker that she had not offered to sell said claim for $550, and, being a long way from home, did not have time to make search for said letters in time

to have them present at the trial of this cause; that said Swacker wrote to said Bucklin another letter subsequent to May 9th, 1891, in which letter she stated in plain terms that she would sell said claim to this affiant for $550, but that at a trial of an unlawful-detainer suit before a justice of peace in Reno county, Kansas, said letter was used in evidence, and at said trial said letter
23 was lost, but that if a new trial is granted herein said affiant believes said letter can be found and the same, being in the handwrite and over the signature of said M. A. P. Swacker, will establish to the court the fact that said M. A. P. Swacker did offer to sell said claim to this defendant; that affiant and said Thomas Bucklin has made diligent search for said last-described letter, but is unable to produce the same at this time, but will do so if a new trial is granted him.

DANIEL A. BUCKLIN.

Sworn and subscribed to before me this 27th day of March, 1893.

[SEAL.] J. C. WILSON, *Clk*,
By J. F. SHEARMAN, *D. C.*

Endorsed: U. S. *vs.* Daniel A. Bucklin. Affd. of Daniel A. Bucklin. Filed M'ch 27, '93. J. C. Wilson, cl'k.

24 FURLEY, SEDGWICK COUNTY, *May 9th*, 1891.

DEAR MR. BUCKLIN: I wrote to you immediately upon my arrival here. I regretted not being able to say good-bye, but our moving was done up in a terrible hurry. Let me hear from you, & if you feel like eating strawberries come down in June & see us. Furley is on the Rock Island; drop me a note that you are coming, & I will send the buggy. How are you getting on with the place? Poor old Jack would not follow us. As soon as the crop is in we will go for him & bring him to his new home. Please take care of him, for no one else can do anything with him. Let me know if you still want the place, & I will close up both bargains at the same time. You know what I mean. I was awful sorry I could not see you before I started, but the teams were hired by the day, & I had just time to pack, besides being sick.

So let us hear from you, & tell me if you got my first letter.

Very truly yours, M. A. P. SWACKER.

Furley, Sedgwick county, Kansas.

Endorsed: Filed M'ch 27, '93. J. C. Wilson, cl'k, by J. F. Shearman, D. C.

25 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

Know all men by these presents that Daniel A. Bucklin, as principal, and Mary Bucklin, as sure*ties*, are held and firmly bound unto the United States of America in the sum of one thousand dollars;

for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators.

The condition of the above bond is that whereas one Daniel A. Bucklin was, at the Sept. term, A. D. 1892, of the United States district court for the district of Kansas, indicted for perjury and the trial on said indictment continued to the March term of the United States district court for the district of Kansas, to be held on the 1st Monday in March, 1893:

Now, therefore, if the said Daniel A. Bucklin shall be and appear in his own proper person before the district court of the United States for the district of Kansas at the next term thereof, to be holden in the city of Wichita, in said district, on Monday, the 27th day of March, A. D. 1893, and not depart therefrom without leave of the said court first had and obtained, then this bond shall be null and void; otherwise to remain in full force and effect.

In witness whereof we have hereunto set our hands and seals this 13th day of March, A. D. 1893.

D. A. BUCKLIN. [SEAL.]
MARY BUCKLIN. [SEAL.]

Signed in the presence of and acknowledged before me this the 13 day of M'ch, A. D. 1893.

J. C. WILSON,
Clerk of said Court.
By J. F. SHEARMAN, *D. C.*

Approved Mar. 13, 1893.
WALKER,
U. S. Marshal.
By DE BOST, *Deputy.*

26 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

I, the undersigned, surety on the within undertaking, do solemnly swear that I am a resident of the State of Kansas, and that I am worth one thousand dollars over and above all exemptions, debts, and liabilities, consisting of five head of horses, fifteen head of cattle, one real-estate mortgage on section eight, Reno Co., Kansas, for five thousand —, and New York Central and Hudson — railroad bond to amount — thousand dollars, all of which is my separate property, so help me God.

MARY BUCKLIN.

Subscribed and sworn to before me this 13 day of M'ch, A. D. 1893.

J. C. WILSON, *Clerk,*
By J. F. SHEARMAN, *D. C.*

Endorsed: The United States *vs.* Daniel A. Bucklin. Bond, $1,000.00, for appearance at M'ch adj'd term of district court, A. D. 1893. Filed this 13 day of M'ch, 1893. J. C. Wilson, clerk, by J. F. Shearman, D. C.

27 THE UNITED STATES OF AMERICA, } ss:
District of Kansas, Second Division, }

The United States of America to the marshal of the district of Kansas, Greeting:

You are hereby commanded that you take Daniel A. Bucklin, if he shall be found in your district, and him safely keep, so that you may have his body before the district court of the United States of America for the district of Kansas, 2nd div., to be held in Wichita, in said district, before the judge of said court, forthwith to answer unto a certain indictment for perjury which has been returned against him unto our said court by the grand inquest of the United States in and for said district; and hereof fail not, and have you then and there this writ, with the return of your doings thereon.

Witness the Hon. C. G. Foster, judge of the said court, at Wichita, in the said district, this 31st day of March, A. D. 1893.

[SEAL.] J. C. WILSON, *Clerk.*
By J. F. SHEARMAN, *Deputy.*

28 *U. S. Marshal's Return.*

DISTRICT OF KANSAS, *ss:*

Rec. this writ at Wichita, April 1st, 1893, and arrested him at Reno county, April 1st, 1893, & now — his body before this court, as commanded in this writ.

R. L. WALKER, *U. S. M.*,
By W. W. SPENCER, *Deputy.*

Service	2 00
Mileage going, 57	3 42
Trans. at P. & Dep., 71 miles each, 142	14 20
Livery at Hutchinson	3 00
Sup. for pris.	50
	$23 12

[Endorsed:] District court United States, district of Kansas. United States *vs.* Daniel A. Bucklin. Capias. Filed April 5th, 1893. J. C. Wilson, clerk.

29 In the District Court of the United States, in the Second Division of the District of Kansas.

UNITED STATES, Pl'ff, }
vs.
DANIEL A. BUCKLIN, Def't. }

Motion in Arrest of Judgment.

Now comes the defendant and moves the court to arrest the judgment of conviction in the above cause for the reason that the indictment upon which this defendant was convicted does not state an offense under the laws of the United States.

2nd. Because the verdict was contrary to the evidence in the case.
3rd. Because of errors of law occurring at the trial.

DAVIDSON & WILLIAMS,
Att'ys for Def't.

Endorsed: In the district court of the United States for the 2nd div. of the dist. of Kans. U. S. *vs* Bucklin. Motion in arrest. Filed April 1, 1893. J. C. Wilson, cl'k.

30 And subsequently, at the same term of said court, the following proceedings were had and appear of record in words and figures as follows, to wit:

SATURDAY, *April* 1*st*, 1893.

UNITED STATES *vs.* DANIEL BUCKLIN. } No. 63. Perjury.

Now, on this day, this cause came on to be heard upon the motion for a new trial filed by the defendant herein, and the said motion, being argued by counsel and considered by the court, is by the court overruled; to which ruling of the court the defendant, by his counsel, duly excepted; and thereupon came on for hearing the motion in arrest of judgment filed herein by the defendant, and said motion, being argued by counsel and considered by the court, is by the court overruled; to which ruling of the court the defendant duly excepted. Thereupon the said defendant was called to the bar of the court and asked if he had any good cause to show why the sentence of the court should not now be pronounced against him upon the verdict of guilty heretofore rendered by the jury herein, and, no such cause appearing, it is now by the court considered, ordered, and adjudged that the defendant be imprisoned at hard labor in the Kansas penitentiary, at Lansing, Kansas, for the period of one and one-half years from the 1st day of June, 1893, and that he make his fine unto the United States of America in the sum of one hundred dollars.

It is further ordered by the court that the marshal deliver or cause to be delivered the body of the said Daniel A. Bucklin to the warden of the said penitentiary within 10 days from said date for the enforcement of this sentence, and that until the 1st day of June next the said defendant be admitted to bail in the sum of two thousand dollars, to be approved by the clerk of this court.

31 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

Know all men by these presents that Daniel A. Bucklin, as principal, and Mary Bucklin and Elmina Stewart, as sureties, are held and firmly bound unto the United States of America in the sum of two thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators.

The condition of the above bond is that whereas one Daniel A. Bucklin was at the Sept. term, A. D. 1892, of the United States dis-

trict court for the district of Kansas indicted for perjury and at the trial on said indictment convicted and sentenced to penitentiary for 18 months, beginning the 1st of June, 1893:

Now, therefore, if the said Daniel A. Bucklin shall be and appear in his own proper person before the marshal of the United States for the district of Kansas, at Wichita, Ks., June 1, 1893, and surrender himself for imprisonment, then this bond shall be null and void; otherwise to remain in full force and effect.

In witness whereof we have hereunto set our hands and seals this 1st day of April, A. D. 1893.

DANIEL A. BUCKLIN. [SEAL.]
MARY BUCKLIN. [SEAL.]
ELMINA STEWART. [SEAL.]

Approved Apl 6, 1893.

R. L. WALKER,
U. S. Marshal.
By DE BOST, *Deputy.*

32 UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

I, the undersigned, surety on the within undertaking, do solemnly swear that I am a resident of the State of Kansas and that I am worth six thousand dollars over and above all exemptions, debts, and liabilities, consisting of real-estate mortgages to amount of five thousand dollars and balance in Hudson River Railroad bonds, the above being my separate property, so help me God.

MARY BUCKLIN.

Subscribed and sworn to before me this 5th day of April, A. D. 1893.

G. V. RICKSECKER,
[SEAL.] *Notary Public.*

UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

I, the undersigned, surety on the within undertaking, do solemnly swear that I am a resident of the State of Kansas and that I am worth six thousand dollars over and above all exemptions, debts, and liabilities, consisting of twenty-five hundred dollars of Hudson River Railroad bonds and in real estate, first-remainder mortgage bonds on New York farm real estate.

ELMINA STEWART.

Subscribed and sworn to before me this 5 day of April, A. D. 189–.

G. V. RICKSECKER,
[SEAL.] *Notary Public.*

Endorsed: The United States *vs.* Daniel A. Bucklin. Bond. $2,000. Filed this 8th day of April, 1893. J. C. Wilson, clerk.

33 UNITED STATES OF AMERICA, *District of Kansas*, } *ss.:*

In the District Court of the United States in and for the Second Division of the District of Kansas.

UNITED STATES, Plaintiff, *vs* DANIEL A. BUCKLIN, Defendant. } *Nunc pro Tunc* Order.

On this 16 day of May, A. D. 1893, appeared Daniel Bucklin, defendant in the above-entitled cause, and before the undersigned judge, at chambers, during a recess of the regular March term, 1893, of the above-entitled court, the undersigned being the judge before whom said above cause was tried, and makes his application for a *nunc pro tunc* order correcting the journals of the above court so as to show that the case of The United States *vs.* Daniel Bucklin was consolidated with the cases of The United States *vs.* Thomas Bucklin and The United States *vs.* George Elder, and were all tried at once, at the same time and to the same jury, and that the said jury returned a verdict of "not guilty" as to Thomas Bucklin and a verdict of "not guilty" as to George Elder; also to correct the journal of said court so as to show that after the overruling of the motion of defendant, Daniel A. Bucklin, in arrest of judgment that the defendant was given until the first day of June, 1893, to prepare and submit to the court his bill of exceptions, file his assignment of errors, and his petition for an appeal to the Supreme Court of the United States.

Which application of said defendant being submitted to the court, and being by the court duly considered, and the facts
34 being that at the trial of said cause of The United States *vs.* Daniel A. Bucklin, the three cases, The United States *vs.* Thomas Bucklin, The United States *vs.* George Elder, and the above-entitled cause, were consolidated, tried at the same time and to the same jury, each of said defendants being charged with perjury, growing out of the same transaction, but being charged, and arraigned, and tried under separate indictments:

And it being a fact that at the time of the overruling of the motion of defendant, Daniel A. Bucklin, in arrest of judgment that the said Daniel A. Bucklin was given until the first day of June, 1893, to prepare and present to the undersigned judge his bill of exceptions, file his writ of error and petition for an appeal to the Supreme Court of the United States—

It is therefore ordered that the clerk of the above-entitled court correct the journals of said court so as to show that at the time of the trial of the above cause that the case of The United States *vs.* Thomas Bucklin — The United States *vs.* George Elder were also tried at the same time and to the same jury, and said jury returned a verdict of "not guilty" as to Thomas Bucklin, and a verdict of "not guilty" as to George Elder, and a verdict of "guilty" as to the above-named defendant.

It is further ordered that the clerk of said court further correct the

records of said court so as to show that at the time of the overruling of defendant Daniel A. Bucklin's motion in arrest of judgment that he was given until the first day of June, 1893, to prepare and submit to the undersigned judge his bill of exceptions, to file his assignment of errors, and to present his petition for an appeal to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand this 16 day of May, A. D. 1893.

JNO. A. WILLIAMS,
U. S. Dist. Judge.

35 Endorsed: United States, pl'ff, *vs.* Daniel A. Bucklin, d'f't. *Nunc pro tunc* order of Judge John A. Williams correcting journal of court. Filed May 20th, 1893. J. C. Wilson, cl'k, by J. F. Shearman, D. C. Davidson & Williams, att'ys for def't.

36 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

In the District Court of the United States in and for the Second District of Kansas.

UNITED STATES, Plaintiff, *vs.* DANIEL A. BUCKLIN, Defendant. } Bill of Exceptions.

Be it remembered that on the trial of the above cause in the district court of the United States in and for the second division of the district of Kansas, at the March, 1893, term thereof, the above cause coming on for trial, the same was, by order of the court, consolidated with and tried with the cases of The United States *vs.* Thomas Bucklin and The United States *vs.* George Elder, each of said defendants being charged with the same offense as this defendant and growing out of the same subject-matter, all of said defendants being indicted and prosecuted under separate indictments, and the said causes, to wit, The United States *vs.* Daniel A. Bucklin and The United States *vs.* Thomas M. Bucklin and The United States *vs.* George Elder, in pursuance of said order, were tried together, at the same time and to the same jury. Thereupon the United States, to maintain the issues on its part against each and all of said defendants in each of said causes, offered the following testimony, to wit:

37 The Government offers in evidence a certified copy of the evidence and testimony in the case of D. A. Bucklin *vs.* M. A. P. Swacker, involving timber-culture entry No. 1798, for the southwest quarter (¼) of section No. eight (8), township No. twenty-three (23) south, range No. four (4) west, Larned, Kansas, U. S. A., the same being a true and literal exemplification of the original on file in the office of the Commissioner of the General Land Office.

The defendants object to the introduction of any testimony under the indictments, for the reason that said indictments do not state facts sufficient to constitute an offense against the laws of the United

States; which objection was by the court overruled; to the overruling of which the defendants excepted and except.

The certified copy of said testimony was then read in evidence.

Admission.

It is admitted that H. P. Wolcott was on the 26th day of February, 1892, the duly appointed, qualified, and acting register of the land office at Larned, Kansas.

38

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb.* 23, 1893.

I, W. M. Stone, Commissioner of the General Land Office, do hereby certify that the annexed copy of the contest, affidavit, and the testimony in the case of D. A. Bucklin *vs.* M. A. P. Swacker, involving T. C. E. 1798, for S. W. ¼ sec. 8, t'p 23 S., R. 4 W., Larned, Kansas, is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Signed) W. M. STONE,
Commissioner of General Land Office.

39

Before the U. S. Land Office, Larned, Kansas.

DANIEL A. BUCKLIN
vs.
MARGUERIETE A. P. SWACKER. } Involving the S. W. Q'r of Sec. 8, T. 23 S., R. 4 W.

The records of this office show that the defendant, formerly Margueriete A. P. De Lagntry, made timber-culture entry No. 1798 (Wichita, Kansas, series) July 17, 1883, for the land in controversy.

On January 15, 1892, the plaintiff filed contest affidavit alleging that "the said Margueriete A. P. De Lagntry failed to break or plow or cause to be broken or plowed five acres of the tract (the entry being for a quarter section) the first year of her entry; that within the 2nd year of her entry she failed to break, plow, or cause to be broken or plowed five acres of said land and failed to cultivate to crop or otherwise five acres of said tract; that she failed to cultivate *the* crop or otherwise *or* five acres of said land and failed to plant trees, timber, seeds, or cuttings during the third year of her entry; that she failed during the fourth year of entry to plant timber, trees, seeds, or cuttings on 5 acres of said land or any part thereof; that she failed to plant trees, seeds, or cuttings or timber on said land during the 5th year of her entry; that she failed on the 6th year of her entry of said land to plant the required
40 number of trees or cuttings thereon and to cultivate all the trees; that no preparation of the ground or planting of trees, seeds, or cuttings has been done on the tract since 1889; that she

has offered to sell or trade said tract, and this contestant believes that she has abandoned long prior to this time."

The case was set for hearing, to be had at this office, on Feb. 25, 1892, at 9 a. m.

The present surname of defendant as given in the contest affidavit was so blurred or erroneously written that the office concluded in was "Swicher," and it was so written in the notice.

9 a. m. Feb. 25, 1892.—Another case being on trial at this time, this case was continued by the office until 1 p. m.

1 p. m. Feb. 25, 1892.—Case called. The evidence of service on file shows that the notice was served upon the defendant by delivering to her in person a true copy thereof, and it is stated in the affidavit of service that the person so served was formerly Marguerietc A. P. De Lagntry, and such service is considered satisfactory.

Here the office states that it is in receipt of a letter from M. C. McCain, an attorney in good standing, dated Feb. 18, 1892, accompanied by the affidavit of four persons as to work done on and the present condition of the land in dispute; that the statements therein contained being sufficient to justify the office in cross-ex-
41 amining the plaintiff's witnesses in the absence of defendant, although she is in default, in order that the office and the reviewing officer may be fully advised of the true condition of the land in controversy at the time this contest was instituted—

Said letter and affidavit being hereto attached, as requested by said McLain, attorney for defendant, and used as a basis for such cross-examination.

Plaintiff appears in person and by attorney, when the following proceedings were had:

Plaintiff has deposited $5.00.

THOMAS M. BUCKLIN, a witness for plaintiff, being first duly sworn, testified as follows:

My name is Thomas M. Bucklin. I am 78 years of age. My P. O. is Kent, Kansas. I live in sec. 8, T. 23 S., R. 4 W., and in the same section and adjoining the land in contest. I am by occupation a farmer. I am acquainted with the land in contest and with the plaintiff and defendant in this case. I have known the land since 1883.

Q. State, if you know, when the first breaking was done on this land and how much.

A. There was a piece broken on the W. side in 1884. There was about two acres and one-half or so.

Q. State when the next work was done and how much it was.

A. In 1884 there was two furrows plowed and planted to
42 cottonwoods on the S. side. I paced the ground, and there was 96 rods.

Q. State what breaking was done in 1885, if any.

A. In 1885 there was 30 acres broke on this land.

Q. What was done on the land in 1886?

A. Corn planted; 30 acres was planted in crop that year.

Q. What was done on the land in 1887?

A. There was five acres planted with black-locust seed, and on the south side about two thousand cottonwood cuttings. They was planted early in the spring, and they thought the man who put them in did not put them in good, and in the first of June it was planted to corn. The ground where the cottonwood cuttings were planted was plowed up that year, but the land where the locust seeds were planted was not plowed up until the next spring.

Q. State what, if anything, was done in 1888.

A. In 1888 they planted nearly all this 30 acres to corn, except the 5 acres which had been planted to black-locust seed, and that was planted to sorghum. All the broks ground was plowed in the spring, except where the two rows of cottonwoods were.

Q. State if any trees, seeds, or cuttings were planted or replanted that year.

A. No, sir; they were not planted that season.

43 Q. State what was done on the land in 1889 in the way of tree-planting, if anything.

A. In 1889, in the spring, the ground which had been planted the year before to locust seed was replanted with black-locust seedlings, and about one acre additional.

Q. State if there has been any additional planting of trees, seeds, or cuttings on the land since 1889, or any cultivation done since that year on the land planted to locust seedlings in 1889.

A. There has not.

Q. What is the condition of the land where these trees were planted and what has it been since 1889?

A. Grown up with rosin-weed or sunflowers.

Q. If there was any trees, seeds, or cuttings, other than you have described, planted on this tree claim near the two rows referred to, state when such planting was done and how much ground is embraced in such planting.

A. There is black-locust trees planted on the S. side next to the two rows of cottonwoods. They were planted the same year the others were.

Q. State if these trees referred to in your last answer as being planted in 1889, near the two rows on the S. side, have been cultivated since that year.

44 A. No, sir.

Q. What effect has this want of cultivation since 1889 had on the trees planted?

A. It dwarfs the growth so that they do not grow so well. A tree well planted will grow better than one not.

Q. State, if you know, if the defendant has this tree claim for sale and still holds it for sale.

A. She has, and still holds it for sale.

Q. State, if you know, of her offering to sell the claim.

A. I do.

Cross-examination by the office:

Q. Are you acquainted with Elias Kile?

A. I am.

Q. Do you know of his doing any planting of locust seed and what year he did it and how many acres he planted?

A. I do.

Q. Was that planting done in 1887, and did such planting cover the 5 acres referred to?

A. I do. Mr. Kile plowed the ground and I put the seed in.

Q. Why was this 5 acres so planted to locust seed early in the spring of 1887 plowed up in 1888?

Q. Because defendant's husband, Mr. Swacker, said they would not grow.

Q. Will you swear positively that no planting of cotton-
45 wood cuttings or walnuts was done on this land in 1888?

A. I will. I am positive there was no planting done in 1888.

Q. Do you know the area or number of acres on which trees are now growing upon this land in controversy?

A. I don't know exact, but I have figured on it and make it between eight and nine acres.

Q. Did you measure the land; and, if so, in what manner?

A. I measured it. The largest tract is 60 rods long and 24 rods the longest end of it and 12 and one-half rods at the other, the piece being 24 rods wide for about half of its length. I made the measurement by pacing and counting the fense posts along the side, which were set two rods apart.

Q. How many acres did you estimate that piece to contain?

A. A little over six acres.

Q. Please give the dimensions of the other tract of land set apart for timber.

A. There is another lot of locust of irregular shape, the ends being much narrower then the other portion. I averaged this as well as I could and designated the piece 36 rods long and 14 rods wide.

Q. How many acres did you estimate this tract to contain?

A. A little more or a little less than three acres. I do not remember.

46 Q. Then, according to your own estimates, there are now fully nine acres of ground upon which timber is growing at the present time?

A. According to my own estimation, it is about 9 acres; a little more or a little less.

Q. What is the average diameter and hight of the trees?

A. The average diameter and hight of these trees growing in these tracts—they vary a great deal, some being no larger than your finger to 4 or 5 inches in diameter and from 2 to 12 feet high.

Q. About how many living trees are there to the acre on there two tracts?

A. The planting appears to have been done in rows six feet apart and the trees about three feet apart in the rows. I judge that about one-fourth of the trees are dead.

Q. Are there any trees growing on this land except on these two tracts which you have just described?

A. There are a few trees growing about the house and the two rows of cottonwood trees, mentioned in my direct examination, on the S. side of the qr., and which are 96 rods long, those rows being also 6 feet apart.

Q. How wide a space would these two rows of cottonwoods require for their reasonable growth and to the exclusion of successful raising of any agricultural crop?

47 A. These two rows are supposed to be inside the line 8 feet, and ordinary crops could not be successfully grown within 10 feet of trees of the size of these.

Q. If there are any buildings on this land in controversy, please state by whom erected, if you know, and the probable cost of such buildings.

A. There is a house on the land in controversy which cost about $2,000, and it was understood that it was built with the defendant's money and for her benefit.

Q. Has the defendant or any one for her given any care or attention to timber-growing on this tract since 1889?

A. No, sir; not as I know of.

Redirect examination:

Q. How many of these large cottonwood trees are there 2 or 3 inches through?

A. About 150.

Q. Does the defendant or any other person live in this house on this timber claim?

A. No, sir.

Q. Has she removed from the land; and, if so, how far is she?

A. She has, and is about 45 miles from this land. She removed in April, 1891.

Q. Could there have been any cultivation of these trees
48 & 49 since 1889 without your knowing it?

A. No, sir.

Q. Have the trees or the land set apart for tree planting been protected from fire or stock in any way?

A. No.

Q. State if the trees have been destroyed or injured in any way for lack of protection.

A. There was a fire that run across the section and the trees were damaged somewhat. I do not know what portion—not all of them. I should think the fire run through about one-third of them; this fire occurred about two weeks ago. About a dozen head of cattle were allowed to roam through the trees for about two or three weeks and did some damage. I do not know how much. This was during the past year.

Q. State if you know the price, if any, the defendant holds this claim at for sale?

A. She offered it to me for about $300.

(Signed) THOS. M. BUCKLIN.

Subscribed and sworn to before me this 25th day of Feb., 1892.
H. P. WOLCOTT, *Register.*

Case adjourned until to-morrow morning.

50 9 a. m., Feb. 26, 1892.—Case called pursuant to adjournment.
Plaintiff present as before.

GEORGE ELDER, a witness for the plaintiff, being first duly sworn, testified as follows:

My name is George Elder. I reside at Kent, Reno county, Kansas. I am acquainted with the land and the parties in this case. I live on sec. 6, right adjoining this land, same T. and R. I have known the land for the last ten years. I have lived where I now live for 8 years.

Q. State, if you know, what has been done on this timber claim from the date of entry—from July, 1883.

A. Yes, I do.

Q. State what was done on this land in 1884, if anything.

A. They broke about 2 and one-half acres on the W. line.

Q. What was done in 1885, if anything?

A. They broke about 30 acres of land.

Q. State, if you know, what was done in 1886.

A. They planted it in corn and cane—the broke land.

Q. What was done in 1887?

A. They planted a couple of rows of cottonwoods on the S. side, and I heard that they put out some locust seed, but I never saw them, and also about 1,500 cottonwood cuttings. They
51 plowed up the cuttings and put the land into corn, as they thought they were no good. They planted the cuttings in April and plowed them up in June.

Q. State what was done in 1888, if anything.

A. They planted corn and cane and plowed all the ground that had been planted to cuttings and timber seeds.

Q. Were there any trees, seeds, or cuttings planted that year?

A. No, sir.

Q. What was done in 1889, if anything?

A. I planted about 9,000 locust seedlings for them; about six acres. I did not measure it; but as near as I could measure it, it was about six acres.

Q. What part of the tract was that planting done on?

A. On the N. E. corner; and also they planted about an acre of scattered trees on another place. They were in the S. E. corner of the place. They cultivated the trees that year.

Q. State if that was all the tree-planting that was done that year.

A. That was all.

Q. Has there been any other planting of trees, seeds, or cuttings on the land since 1889?

A. No, sir.

Q. Has there been any cultivation of the ground planted to trees on this tract since 1889 to the present time?

52 A. No, sir.

Q. What has been the condition of the land planted to trees since 1889, and what is its present condition as to grass and weeds?

A. It is growed up in sunflowers, rosin-weeds, and sand burrs, till about two weeks ago there was a fire run through about half of it.

Q. State if you know what effect this fire had on the trees.

A. It killed the majority of them down to the ground.

Q. Did this fire start on the land in contest?

A. No, sir; it sta-ted just a mile S. of this land, on section 17.

Q. Was the land on which this tree-planting was done protected in any manner from fire by fire-guards or otherwise or from the running of stock over the land at will?

A. The fire-guards were all grown up to weeds, and they had not been stirred for two years. It was not protected in any way; and as for the stock, I frequently saw stock running through there, as there was nothing to keep stock out. The cattle along the S. side broke down a good many of the large trees.

Q. State if you know if the defendant has been holding an offer of this claim for sale, and is still offering it for sale.

A. In the spring of 1890 I went up there to try and make a contract for cultivating these trees, and she said no, she would

53 not pay anything and had spent her last dollar on the place, but if you send me a purchaser for it I will make it worth your while. I asked her what she held it at, and she said $550.

Q. Do you refer to the defendant as "she," designating the person with whom you had this conversation?

A. Yes, sir.

Q. State, if you know, of any one who represents themselves as the agent of the defendant for the sale of this claim and who has attempted and is still attempting to sell it?

A. Mr. B. F. Macklin. I have seen him showing several parties over the land, and he also showed me a letter from the defendant offering the place for sale. This was last fall. I saw him with another party on the claim this month. I was present. The man asked me if I knew how long the trees had been planted; I told him I did. He made the remark to Macklin, "That he would not give that much for it." I did not know the price he had asked him for it.

Q. It appears in the testimony of Mr. Bucklin that there is a house on the claim. State what you know of the condition of the house, if anything.

A. The foundation is fallen away from the house and generally going to wreck for want of care.

Q. Have you any interest in this land, or in this case?

A. None whatever.

54 Cross-examination by the office:

Q. What relation is Thomas M. Bucklin, the first witness examined, to the plaintiff?

A. He is his father.

(Signed) GEORGE ELDER.

Subscribed and sworn to before me this 26th day of Feb., 1892.

H. P. WOLCOTT, *Register.*

DANIEL A. BUCKLIN, a witness in his own behalf, being first duly sworn, testified as follows:

My name is Daniel A. Bucklin. I am 25 years of age. My P. O. is Kent, Reno county. I am a farmer by occupation. I am acquainted with the land in contest and with the defendant. I have known the land since June, 1889, and its condition.

Q. State what trees were planted or growing on the land at the time you first became acquainted with it.

A. There was about six acres of black locust on the N. E. corner of this land. The defendant said they were planted that spring. On the S. E. corner and along the side on the south I should judge there was about two acres of black locust and cottonwoods.

Q. Does this include all the timber planted at that time?

A. There was about 50 trees about the house, I should judge—locust and plum trees; that was all.

55 Q. Has there been any additional planting of trees, seeds, or cuttings since 1889, or has there been any cultivation of the trees planted from 1889 to the present time?

A. There has not.

Q. What has been the condition of the ground where these trees were planted since 1889 and what is its present condition?

A. It has been grown up to weeds, sunflowers—some of them were as large as your head—until about two weeks ago half of them was burnt over with fire.

Q. State if this fire injured the trees. If so, to what extent?

A. It did injure them; it burnt down to the ground.

Q. About how thick did the sunflowers and weeds stand on the ground among these trees at the time of the fire?

A. They stood so thick that if you went through them you would tread on several. You would have to crowd through them.

Q. State if the trees have been protected in any way from fire or the running at large of stock since you have known the land.

A. It was protected in 1889 from the ravages of fire and the ravage of stock, but not since.

Q. State what you know, if anything, of the defendant holding and offering this place for sale.

Q. She offered to sell me the place for 550 dollars.

56 Q. When was that?

A. Last Feb'y, 1891—the day before the defendant left the house.

Q. In April, 1891, she let a Mr. Butler take a lot of cattle onto

the corn-stocks right among the trees and let them run at large, and they were there two weeks, to my knowledge. I don't know whether they injured the trees or not.

Q. It appears that there is a house on this claim. State if you know its condition.

A. I do.

Q. What is it?

A. The N. E. corner of the foundation is falling out, the roof leaks, and the plastering is fallen down from the *sealing*. The foundation pillars have rotted away from the stoops and the stoops have fallen down, and it is generally gone to wreck.

Cross-examination by the office:

Q. Did you ever measure the land on which trees were growing at the institution of this contest?

A. By pacing it off.

Q. Did your measurement so made agree with those given by your father in his testimony?

A. My measurement held out within a qr. of an acre of his. We paced it separately and I figured the area, and I made it a
57 qr. of an acre less than he did.

Q. Is the herd law, which prevents the running at large of stock, enforced in Reno county, where this land is situated?

A. I believe it is, as I never saw any stock loose except some one was with them.

Q. This fire which you speak of occurred since the commencement of this contest, did it not?

A. Yes, sir.

Redirect examination:

Q. You say the timber was protected from fire by fire-guards in 1889, but not since. Now, state the condition of these fire-guards at the time this fire occurred.

Q. The grass has grown up to be about 18 inches or two foot high in the fire-guards and on both sides of it.

Q. Did the fire burn the grass over these fire-guards?

A. Yes, sir.

Q. If these fire-guards had been kept up properly by keeping them clear of grass, would it, in your judgment, have afforded protection to the timber against this fire?

A. It would; especially if somebody had been there to watch it and set a back fire.

Q. You say, "You never saw any cattle running at large
58 unless some one was with them." State if there was any one with these 12 head of cattle that the defendant allowed Butler to turn on this land near this timber.

A. There was a boy about 12 years old there to keep them in the cornstalks.

(Signed) DANIEL A. BUCKLIN.

Subscribed and sworn to before me this 26th day of Feb., 1892.
H. P. WOLCOTT, *Register.*

Here the plaintiff rests, and case closed.

59 M. A. P. SWACKER, being called upon behalf of the Government and being duly sworn, testified as follows:

My name is M. A. P. Swacker. I reside at Furley, Sedgwick county, Kansas. On July 17th, 1883, I filed a timber entry on the southwest quarter of section eight, township twenty-three, range four, Reno county, Kansas. That was before I was married, my maiden name being De Lag*u*try. At the time I filed said entry there was five acres of ground broken, which had been broken by one Mr. Hoagland, who had previously filed an entry on the same land. I purchased Mr. Hoagland's right to the land. He relinquished to the Government and I filed upon the same. The next spring after I purchased the tract of Mr. Hoagland, the same being the spring of 1884, I bought of Mr. Mart Hoagland twenty-five thousand cottonwood cuttings. Mr. Wiley, a gentleman who was in my employ and working for me at the time, planted them for me. They were first put in a slough upon a tract of ground until the ground upon which they were to be planted was made ready, when he put them out. He put them out on the south side of the section. In 1884 Mr. Wiley and Pat. Gillispie plowed about thirty acres of ground and fensed three sides of the same. The sod was planted to corn. The cottonwood cuttings that were planted
60 covered above ten acres, but on account of the dry weather and the drifting of the sand, they never sprouted. In 1885 I bought ten thousand one-year-old cottonwoods of a Mr. Van Smith, who lived on section sixteen, and I had them put out by Mr. Wiley and George Elder, one of the defendants herein, but only a few hundred of them lived, and we put the ground in corn. In 1886 I purchased two bushels of curled maple seed and had them planted on this place. I do not know how many acres they planted. I also planted some nursery stock, but it failed to grow and died on account of hot winds. All the land that was not in trees in 1886 and under cultivation was put into corn. What cottonwoods were growing on the place did well that year. In 1887 I planted ten pounds of black-locus- seed on about ten acres of land. We harrowed the seed in and put the rest of the ground in corn. The seed did not sprout, and in June of the same year we planted the ground in which the black-locus- seed had been planted in sorghum seed. In 1888 I planted about one bushel of black walnuts and several hundred catalpas. I do not know how much land was planted in trees. I gave orders to put in ten acres. The walnuts did not grow, except a few afterwards, and the catalpas did no good at all. The rest of the cultivated ground we put to corn. In 1889 we planted upon said land twelve thousand black locus-, one and two years old. They were planted by George Elder,
61 one of the defendants, a Mr. Dutfield, and Mr. Swacker, now my husband. There was at least twelve acres of them, and

they were cultivated twice in 1889 with a cultivator, and afterwards they were hoed. They were also cultivated in 1890, when they outgrew cultivation, and we left them alone. In 1890 the two-year-old trees planted were about six feet high, and the yearlings about as tall as myself. We moved away from the place in April, 1891, moving to Furley, Sedgwick county, Kansas. We never planted any trees or seeds or cuttings or timber seed upon said land after 1889. I left the place in charge of Thomas Bucklin. I knew nothing of the contest at Larned, or that there was going to be a contest filed, until Thomas Bucklin, one of the defendants, came to my house in January, 1892, to serve upon me a notice of the contest, which was to be in February, 1892. I did not go to Larned to attend the contest. I never abandoned the place or offered to sell the place to any one.

Cross-examination:

I did not go to Larned to attend the contest because I had no money, nor had my husband any. Yes; I went to France with my husband in 1889. I do not know how much money I brought to this country; our expenses were very large. I cannot state the
62 number of thousands of dollars I brought back from France. It is all gone now; all spent. It was all spent at the time of the contest at Larned. No; I don't know that I have a deposit in the bank at Wichita and have had ever since returning from France. Yes; I had a homestead near this timber claim. Mrs. Lloyd, the daughter of Thomas Bucklin, and myself lived together in 1883 and for several years.

63 MART HOAGLAND, being called on behalf of the Government and being duly sworn, testified as follows:

I have heard the testimony of Mrs. Swacker. I filed upon the timber claim referred to by her prior to the time in which she made her filing, and was the owner of the place until some time in 1883, when I traded her my right and relinquished to the Government in the spring of 1883. I had broken about five acres of ground upon said place, and while I owned the same. In 1884 I sold twenty-five thousand cottonwood cuttings to these parties on this place. I don't know who bought them, and don't know who paid me for them, but I think Mr. Wiley came and got them.

64 SAMUEL DEMERETT, being called on behalf of the Government and being duly sworn, testified as follows:

On the — day of January, 1892, I was called upon to make an examination of the timber claim in question. I found the ground planted in cottonwoods, walnuts, catalpas, and black locus-. Mr. McLain and Hudlow assisted me in making the examination. This examination was made just before or just after the contest in Larned. We stepped it off and estimated that there was between thirteen and fourteen acres of trees. There was about six or eight acres of black locus-, and the balance cottonwoods and catalpas. There was very

few dead at the time of the examination. There was at least 675 living trees to the acre.

Cross-examination:

We made the measurement by stepping it off. I stepped one side and gave the number of steps to Mr. Hudlow; Mr. McLain stepped one end of the tract of trees and gave the number of his steps to Mr. Hudlow, and Mr. Hudlow made the calculation, and that is the way in which we arrived at the conclusion that there was thirteen or fourteen acres.

65 —— HUDLOW, being called on behalf of the Government and being duly sworn, testified as follows:

I have known the place in question since 1885. I did not step the ground to ascertain the number of acres there was in trees. The stepping was done by Mr. McLain and Mr. Demerett, and we calculated there was about thirteen acres. There was about thirty acres of the plowing. The trees consisted of black locus and cottonwoods. The black locus were in good shape. There was about nine acres of black locus. We calculated that there was about two acres of cottonwoods. We counted the trees—that is, we counted a row each way. Mr. McLain counted a row one way and Mr. Demerett counted a row another way. They then gave me their counts and I made the calculation, and we estimated there was about thirteen thousand trees. They would run from about one inch up to three inches. I had a conversation with Mr. Thomas Bucklin in which he stated that Mrs. Swacker had left the farm in his charge. The ground was pretty badly grown up in weeds.

66 B. F. MACKLIN, being called on behalf of the Government and being duly sworn, testified as follows:

I assisted Mr. Hudlow and Mr. Demerett in making a calculation as to the number of acres of ground that was in trees and the number of trees that were living on the place heretofore referred to in the spring of 1892. The way we made our estimate was, we took a few rows from the outside and counted them and made an estimate from them. We estimated that there was from eleven to twelve thousand trees, about ten thousand of which was black locust. I thought the place was in extra condition and the trees fine trees and in good shape. We estimated that there was about thirteen acres of trees. In a portion of the ground covered by trees there was some weeds. The other portion had been burned off.

67 ELIAS KILE, being called on behalf of the Government and being duly sworn, testified as follows:

I reside in Missouri. I left Kansas and went to Missouri in the year 1892. I worked upon the place in question in 1887. In the latter part of May of that year I planted on said place twelve acres in black locust. Mr. Bucklin dropped them and I plowed them under. I suppose at that time there was about thirty of thirty-five

acres of broken ground besides. I examined the place about one year ago for the purpose of ascertaining how many trees there were planted upon the place. We made about eleven or twelve thousand trees, about nine or ten thousand of which was black locust; that there was something about thirteen acres planted.

68 B. A. MERRILL, being called on behalf of the Government and being duly sworn, testified as follows:

I reside upon the homestead of Mrs. Swacker, adjoining the timber claim in question. I took all the care I could of the place. There are a great many trees on the place. There are about twelve or thirteen thousand trees, averaging about six inches in diameter. They are planted in rows six of eight feet apart each way. There are seven or eight hundred cottonwoods on the place. I had a conversation with Thomas Bucklin, one of the defendants, in which he told me that Mrs. Swacker had left the place in his charge.

69 JAMES KILE, being called on behalf of the Government and being duly sworn, testified as follows:

My name is James Kile. I am the son of Elias Kile, who heretofore testified in this cause. I assisted in putting out about eleven acres of trees on said place in 1888.

70 PAT. GILLESPIE, being called on behalf of the Government and being duly sworn, testified as follows:

I reside near the place in question, and I have lived there since 1883. I broke eight acres of ground the first year the lady was there. I don't know whether it was on the homestead or on the timber claim.

71 BURT WOODRUFF, being called on behalf of the Government and being duly sworn, testified as follows:

In 1888 I lived with Mrs. Swacker on the place referred to by witnesses. I worked for her in the summer and stayed there and went to school in the winter. We farmed all the ground in corn. There was a few cottonwood trees on the south side of the place. In the spring of 1889 we put out the black locust. We put out nine rows to the acre, and there was about nine acres. I cultivated them in 1889—plowed the ground the fall before—and cultivated them twice in 1890, and mowed the weeds out of them once. I cultivated them with a John Deere cultivator; drove astrad-le of the rows. The trees grew up in 1890 so that they could not be cultivated any more. I saw the grove in 1891. While there was some weeds, the trees were outgrowing the weeds. Thomas Bucklin had charge of the farm in 1891. I heard him say that he had charge of the farm. Daniel Bucklin, the defendant, came to this country some time in the summer of 1889.

72 J. W. SWACKER, being called on behalf of the Government and being duly sworn, testified as follows:

My name is J. W. Swacker. I am the husband of M. A. P. Swacker. I was married to her in the year 1889. In 1889 we bought of a Mr. White about twelve thousand black locust, one and two years old. I planted them upon the timber claim of Mrs. Swacker heretofore referred to. I should judge that there was from eleven to twelve acres of them. When I last saw them—in April, 1891—they were doing well and were alive and thrifty. I reside within two and one-half miles of Furley, Sedgwick county, Kansas, and we have lived there since April, 1891. I never had any intimation of the contest on said timber claim filed by the defendant, Daniel Bucklin, until it was commenced.

73 The defense, to maintain the issues on their part, offered the following evidence, to wit:

GEORGE ELDER, of lawful age, being produced and sworn, upon his oath says:

I am one of the defendants. I reside within a mile of the timber claim of Mrs. Swacker, or that which was Mrs. Swacker's. I have known the land for a number of years. I assisted in putting out a portion of the trees upon said claim and also in cultivating a portion of the ground. There has been no trees planted upon said claim since 1889. The trees that are there were cultivated in the spring of 1889, and they may have been cultivated in 1890; I won't be sure of that—probably a portion of them were. I was on the place in 1890, and a portion of it had badly grown up to weeds. Mrs. Swacker moved away from the place in 1891. I was at the place on the day she left, and I heard her say that she would take $550.00 for the place and its improvements. I had gone up there to see if she did not want me to do some work for her on the place. She told me that she had spent the last dollar on the tract of land that she intended to.

74 THOMAS BUCKLIN, of lawful age, being produced and sworn, upon his oath says:

I am one of the defendants. I am the father of Thomas Bucklin, one of the other defendants. I am 79 years of age. I came to this country with Mrs. Lloyd, my daughter, and Mrs. Swacker, and lived with them at the time Mrs. Swacker made the timber entry in question, and I lived near them until she left the place, in 1891. I have been acquainted with the place since 1889. There has been no trees planted upon said place since that time, and in 1889 there was about nine acres of trees—about six acres of black locust, about two acres of cottonwoods, and then about fifty trees or more around the house. There was no cultivation of the trees after the year 1889, and no trees planted on the place after that time. Mrs. Swacker offered the timber claim in question to Daniel Bucklin for $550.00. I told her that if she moved away and left it that some one would file a contest

upon it, and that Dan. could file the contest and pay her for the improvements afterwards, and she agreed to this. I served the notice of contest upon her myself. I went to her place at Furley, Sedgwick county, Kansas. I got there about noon and told her what I had come for and served the notice upon her directly after I got
75 there. She invited me to stay all night and I did stay all night and until the next day, when the young man who was living with her took me to the depot to make the train home again. She made no objection to the contest at the time, but fully understood the matter. She treated me, while there, very kindly and pleasantly and insisted upon my prolonging my visit.

76 DANIEL BUCKLIN, of lawful age, being produced and sworn, upon his oath says:

My name is Daniel Bucklin. I am one of the defendants. I came to Kansas from New York in June, 1889. I moved upon land near the timber claim in question. I have known the timber claim in question ever since. There has been no trees planted upon said place since 1889, nor has the same been cultivated, to my knowledge, since that time. Mrs. Swacker offered to sell me the timber claim in question in April, 1891, since she moved away from the same to Furley, Sedgwick county, Kansas, for $550.00.

77 The foregoing was all the evidence offered by either party in the trial of this cause, and the jury, having received the instructions of the court and heard the arguments of counsel, and having retired to consider their verdict and having deliberated upon their verdict from the 8th day of March, at 3 o'clock p. m., until this 11th day of March, at 2 o'clock p. m., come into court in a body and through their foreman propound to the court the question, "Can we find a verdict as to some of the defendants and disagree as to the others?" To which question the court answered, "You can find a verdict of guilty as to all, a verdict of not guilty as to all, or you can find some guilty and some not guilty, but you cannot find a verdict as to some and disagree as to others." To which answer and instruction of the court the defendant excepted and excepts.

Whereupon the jury again retired to consider further their verdict, and having returned into court their verdict of guilty as to defendant Daniel A. Bucklin and not guilty as to defendants Thomas Bucklin and George Elder, and the jury being discharged, the defendant Daniel A. Bucklin filed in said cause his motion for a new trial, which is in words and figures as follows, to wit:

78 In the District Court of the United States in and for the Second Division of the District of Kansas.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
DANIEL A. BUCKLIN, Defendant.

Motion to Set Aside Verdict and Grant a New Trial.

Now comes the said defendant, Daniel A. Bucklin, by Davidson & Williams, his attorneys, and moves the court to set aside the verdict rendered in the above-entitled cause on the 11th day of March, 1893, and at the present term of this court, and grant the defendant herein a new trial for the following reasons, to wit:

First. Because the verdict given in this case is against and contrary to the weight of evidence and the law of the case.

Second. Because the evidence in this case is at variance with the allegations of the indictment.

Third. Because of misconduct on the part of the jury which rendered the said verdict, in this, that three cases, viz., The United States *vs.* this defendant, The United States *vs.* Thomas Bucklin, and The United States *vs.* George Elder, were all tried at once and submitted to the same jury for deliberation, and that said jury, after deliberating on all three of said cases from the 8th day of March, 1893, at 3 o'clock p. m. of that day, until 6 o'clock p. m. of the 11th day of March, 1893, brought in the said verdict of guilty against this defendant, and that the same was arrived at as a compromise and settlement of all three of said cases and was not a determination by said jury of the above-entitled cause upon its merits.

Fourth. On account of newly discovered evidence, which has been discovered since the trial of the above cause, as shown by affidavit hereto attached and made a part hereof, which evidence said defendant could not with reasonable diligence have discovered
79 before the trial of said cause.

Fifth. Because the defendant in this action was surprised by the testimony of witnesses for the prosecution wherein they testified that there *was* twelve acres of growing trees upon the contested claim testified about in this case; that, said evidence being against the facts, this defendant had no means of knowing nor was he informed that said witnesses would so testify; that if a rehearing is had of this case said defendant can satisfy this court by overwhelming testimony, as is shown by the affidavit hereto attached, marked Exhibit "B," that the said testimony in that respect of the witnesses for the prosecution was untrue and false.

DAVIDSON & WILLIAMS,
Attorneys for Defendant.

Endorsed: United States of America *vs.* Daniel A. Bucklin. Motion for new trial. Filed March 13th, 1893. J. C. Wilson, clerk.

80 In the United States District Court for the Second Division of the District of Kansas.

STATE OF KANSAS, Plaintiff,
vs.
DANIEL A. BUCKLIN, Defendant. } Affidavit.

STATE OF KANSAS, }
County of Sedgwick, } *ss:*

Daniel A. Bucklin, of lawful age, being sworn, upon his oath says that the letter hereto attached and dated May 9th, 1891, and which letter is made a part of this affidavit, is in the handwriting and over the signature of M. A. P. Swacker and was by her written to Thomas Bucklin, the father of this affiant; that the reference in said letter to "bargains" referred to the sale of the improvements and the interest of the said Swacker in a timber claim, being the S. W. ¼ of section 8, twp. 23, R. 4, in Reno county, Kansas, to this affiant; that at the trial of the above cause said affiant did not know of the existence of said letter, and was surprised at the testimony of the said Swacker that she had not offered to sell said claim for $550.00; that said Swacker wrote to said Bucklin another letter subsequent to May 9th, 1891, in which letter she states in plain terms that she would sell said claim to the affiant for $550.00, but at the trial of an unlawful-detainer suit before a justice of the peace in Reno county, Kansas, said letter was used in evidence, and at said time said letter was lost, but that if a new trial is granted herein said affiant believes said letter can be found, and the same, being in the handwriting and over the signature of the said M. A. P. Swacker, will establish to the court the fact that said M. A. P. Swacker did offer to sell said place to this defendant; that affiant and said Thomas
81 Bucklin *has* made diligent search for said last-described letter, but *is* unable to produce the same at this term, but will do so if a new trial is granted herein.

(Signed) DANIEL A. BUCKLIN.

Sworn and subscribed to before me this 27th day of March, 1893.
(Signed) J. C. WILSON, *Clerk*.
By J. T. SHEARMAN, *Deputy*.

Endorsed: United States *vs.* Daniel A. Bucklin. Affidavit of Daniel A. Bucklin. Filed March 27, 1893. J. C. Wilson, clerk.

82 FURLEY, SEDGWICK CO., KAN., *May* 9, 1891.

DEAR MR. BUCKLIN: I wrote you immediately upon my arrival here. I regretted not being able to say good-bye, but our moving was done up in a terrible hurry. Let me hear from you, and if you feel like eating strawberries come down in June and see us. Furley is on the Rock Island. Drop me a note that you are coming and I will send the buggy. How are you getting on with the place? Poor old Jack would not follow us; as soon as the crop is in we will go for him and bring him to his new home. Please take care

of him, for no one else can do anything with him. Let me know if you still want the place and I will close up both bargains at the same time. You know what I mean. I was awful sorry I could not see you before I started, but the teams were hired by the day and I had just time to pack, besides being sick. Do let us hear from you, and tell me if you got my first letter.

Very truly yours, M. A. P. SWACKER.

Furley, Sedgwick Co., Kansas.

Filed March 27th, 1893.

83 The court, having duly considered said motion, doth overrule the same; to the overruling of which motion for a new trial the said defendant, Daniel Bucklin, then and there and at the time excepted and excepts, and the said defendant *having* filed in said cause his motion in arrest of judgment in words and figures as follows, to wit:

84 In the District Court of the United States for the Second Division of the District of Kansas.

UNITED STATES, Plaintiff,
vs.
DANIEL A. BUCKLIN, Defendant. } Motion in Arrest of Judgment.

Now comes the defendant and moves the court to arrest the judgment of conviction in the above cause for the reason that the indictment upon which the defendant was convicted does not state an offense under the laws of the United States.

Second. Because the verdict was contrary to the evidence in the case.

Third. Because of error of law occurring at the trial.

(Signed) DAVIDSON & WILLIAMS,
Attorneys for Defendant.

Filed April 1, 1893.
(Signed) J. C. WILSON, *Clerk.*

85 And the court, having duly considered the same, doth overrule said motion in arrest of judgment; to the overruling of which motion the defendant then and there and at the time excepted and excepts; that thereafter, upon the same day, said court proceeded to render judgment against said defendant, Daniel Bucklin; which judgment is incorporated in the journal entry of the same in words and figures as follows, to wit:

86 And subsequently, at the same term of said court, the following proceedings were had and appear of record in words and figures as follows, to wit:

SATURDAY, *April 1st*, 1893.

UNITED STATES
vs. } No. 63. Perjury.
DANIEL A. BUCKLIN.

Now, on this day, this cause came on to be heard upon the motion for a new trial filed by the defendant herein, and the said motion, being argued by counsel and considered by the court, is by the court overruled; to which ruling of the court the defendant, by his counsel, duly excepted; and thereupon came on for hearing the motion in arrest of judgment filed herein by the defendant, and said motion, being argued by counsel and considered by the court, is by the court overruled; to which ruling of the court the defendant duly excepted. Thereupon the said defendant was called to the bar of the court and asked if he had any good cause to show why the sentence of the court should not now be pronounced against him upon the verdict of guilty heretofore rendered by the jury herein, and no such cause appearing, it is now by the court considered, ordered, and adjudged that the defendant be imprisoned at hard labor in the Kansas penitentiary at Lansing, Kansas, for the period of one and one-half years from the 1st day of June, 1893, and that he make his fine unto the United States of America in the sum of one hundred dollars.

87 It is further ordered by the court that the marshal deliver, or cause to be delivered, the body of the said Daniel A. Bucklin to the warden of the said penitentiary within 10 days from said date for the enforcement of this sentence, and that until the 1st day of June next the said defendant be admitted to bail in the sum of two thousand dollars, to be approved by the clerk of this court.

88 To the judgment thereon rendered the defendant then and there and at the time excepted and excepts, and prays the court herein to settle, sign, and seal this his bill of exceptions and order the same to be made a part of the records in this case.

89 And be it further remembered that at the time of overruling motions for new trial and in arrest of judgment defendant was given until June 1st, 1893, in which to prepare and reduce his exceptions, had and taken upon the trial and not of record in said cause, to writing and present the same to the judge of the court for allowance and signing.

90 UNITED STATES OF AMERICA, *ss:*

I, the undersigned, John A. Williams, judge of the district court of the district of Kansas, second division, setting at Wichita, in said district, duly appointed and commissioned to preside at the regular March term, A. D. 1893, of said court, do hereby certify that the above and foregoing bill of exceptions was presented to me on the 16th day of May, A. D. 1893, the said defendant having been given until June 1st, 1893, to prepare and present to me his said bill of exceptions; and I do further find said bill of excep-

tions to be true, and I do hereby sign, settle, and allow the same; and I do further order said bill of exceptions to be filed in said court as part of the record in this case.

JNO. A. WILLIAMS,
Judge of the United States District Court of Kansas.

91 In the District Court of the United States in and for the Second Division of the District of Kansas.

THE UNITED STATES OF AMERICA)
vs.
DANIEL A. BUCKLIN.)

I, J. W. Ady, United States district attorney within and for the district of Kansas and who represented the United States as attorney of record in the trial of the abovesentitled cause, having examined the above and foregoing testimony and bill of exceptions, find the same to be correct and consent that the judge who tried the above cause may settle, sign, and seal said bill of exceptions and order that the same, together with the above testimony, may be filed in said cause as a part of the records in said cause; and I further waive any and all notices of the time and place of settling, signing, and sealing said bill of exceptions and the testimony therein, and consent that the same may be settled, signed, and sealed at any time and place when presented to said judge by the said defendant.

J. W. ADY,
U. S. Attorney.

92 Endorsed: No. 63. United States, plaintiff, *vs.* Daniel A. Bucklin, defendant. Bill of exceptions. Filed this 20th day of May, 1893. J. C. Wilson, cl'k, by J. F. Shearman, D. C.

93 UNITED STATES OF AMERICA,)
District of Kansas,) *ss:*

In the District Court of the said United States in and for the Second Division of the District of Kansas.

UNITED STATES OF AMERICA, Plaintiff,)
vs. Assignment of Errors.
DANIEL A. BUCKLIN, Defendant.)

Now comes Daniel A. Bucklin, defendant in the above cause, and files herein his assignment of errors occurring in the trial of the above cause as follows, to wit:

First. The court erred in permitting the three cases, to wit, The United States *vs.* Thomas Bucklin and The United States *vs.* George Elder and The United States *vs.* Daniel A. Bucklin, to be consolidated and tried together and to the same jury, each of said defendants having been separately indicted.

Second. The court erred in its reply to the question of the foreman of the jury which tried said cause when the said jury, after

having deliberated upon their verdict for three days, on the 11th day of March, 1893, came into court in a body and the foreman asked the court if the jury could agree as to some of the defendants and disagree as to one, and to which the court replied: "I think not. The jury can convict some of the defendants and acquit some or find all guilty or all not guilty, but they cannot find a verdict as to some and disagree as to one or more."

Third. The court erred in overruling the defendant's motion for a new trial.

94 Fourth. The court erred in overruling the motion of defendant in arrest of judgment.

Fifth. The court erred in rendering a judgment of conviction in said cause against the defendant.

DAVIDSON & WILLIAMS,
Attorneys for Defendant.

Endorsed: United States of America *vs.* Daniel A. Bucklin. Assignment of errors. Filed May 20th, 1893. J. C. Wilson, cl'k, by J. F. Shearman, D. C. Davidson & Williams, att'ys for def't.

95 UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

In the District Court of the United States in and for the Second Division of the District of Kansas.

UNITED STATES, Plaintiff, }
vs } Petition for Appeal.
DANIEL A. BUCKLIN, Defendant. }

To the Hon. John A. Williams, judge of the U. S. district court of the State of Kansas, 2nd division:

The defendant in the above-entitled cause, Daniel A. Bucklin, complains that at the March, 1893, term of the above-named district court of the United States within and for the second division of the district of Kansas and in said above-entitled cause a judgment of conviction was rendered against the defendant on a charge of perjury. A copy of the record of the judgment, proceedings, bill of exceptions, and assignment of errors *are* hereto attached and made a part of this petition. The said Daniel A. Bucklin avers that there is error in the said record and proceedings, in this, to wit:

First. The court erred in permitting the three cases, to wit, The United States *vs.* Thomas Bucklin, The United States *vs.* George Elder, and The United States *vs.* Daniel A. Bucklin, to be consolidated and tried together and to the same jury, each of said defendants having been separately indicted.

Second. The court erred in its reply to the question of the foreman of the jury which tried said cause when the jury, after having deliberated upon their verdict for three days, on the 11th

96 day of March, 1893, came into the court in a body and the foreman asked the court if the jury could agree as to some of the defendants and disagree as to one, and to which the court re-

plied, "I think not. The jury can convict some of the defendants and a-quit some or find all guilty or all not guilty, but they cannot find a verdict as to some and disagree as to one or more."

Third. The court erred in overruling the defendant's motion for a new trial.

Fourth. The court erred in overruling the defendant's motion in arrest of judgment.

Fifth. The court erred in rendering a judgment of conviction in said cause against the defendant.

Wherefore the said defendant, Daniel A. Bucklin, feeling himself aggrieved at the said errors and of said judgment of said court, prays that he may be allowed an appeal from said judgment to the Supreme Court of the United States; that defendant may be restored to all things he has lost by reason thereof, and that a transcript of the record and proceedings upon which said judgment was rendered, duly authenticated, be sent to the Supreme Court of the United States.

DANIEL A. BUCKLIN,
By DAVIDSON & WILLIAMS, *His Att'ys.*

97 UNITED STATES OF AMERICA, }
District of Kansas, } ss:

In the District Court of the said United States in and for the Second Division of the District of Kansas.

UNITED STATES OF AMERICA, Plaintiff, }
vs. } Assignment of Errors.
DANIEL A. BUCKLIN, Defendant. }

Now comes Daniel A. Bucklin, defendant in the above cause, and files herein his assignment of errors, occurring in the trial of the above cause, as follows, to wit:

First. The court erred in permitting the three cases, to wit, The United States *vs.* Thomas Bucklin and The United States *vs.* George Elder and The United States *vs.* Daniel A. Bucklin, to be consolidated and tried together and to the same jury, each of said defendants having been separately indicted.

Second. The court erred in its reply to the question of the foreman of the jury which tried said cause when the said jury, after having deliberated upon their verdict for three days, on the 11th day of March, 1893, came into the court in a body and the foreman asked the court if the jury could agree as to some of the defendants and disagree as to one, and to which the court replied, "I think not. The jury can convict some of the defendants and acquit some, or find all guilty or all not guilty, but they cannot find a verdict as to some and disagree as to one or more."

Third. The court erred in overruling the defendant's motion for a new trial.

98 Fourth. The court erred in overruling the motion of defendant in arrest of judgment.

Fifth. The court erred in rendering a judgment of conviction in said cause against the defendant.

(Signed) DANIEL A. BUCKLIN,
(By) DAVIDSON & WILLIAMS,
His Attorneys.

Endorsed: No. —. United States *vs.* Daniel A. Bucklin. Assignment of errors.

Endorsed: No. —. United States, pl'ff, *vs.* Daniel A. Bucklin, d'f't. Petition for appeal to the U. S. Supreme Court, with copy of assignment of errors attached. Filed May 20th, 1893. J. C. Wilson, cl'k, by J. F. Shearman, D. C. Davidson & Williams, att'ys for def't.

99 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

Know all men by these presents that Daniel Bucklin, as principal, and Mary Bucklin and Elmina Stewart, as sureties, are held and firmly bound unto the United States of America in the sum of two thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators.

The condition of the above bond is that whereas one Daniel A. Bucklin was, at the March term, A. D. 1893, of the United States district court for the second division of the district of Kansas, upon a trial had in said court, convicted of the charge of perjury, and was by said court adjudged guilty and judgment of conviction rendered against him, and was by the said court, by reason of said judgment of conviction, sentenced to imprisonment in the Kansas State penitentiary, at the city of Lansing, in said State, for a period of eighteen months from the first day of June, 1893, the period at which the term of said imprisonment shall commence;

And whereas the said Daniel A. Bucklin has prayed for an appeal from the judgment of conviction of said court to the Supreme Court of the United States; and whereas said appeal has been allowed; and whereas the execution of said judgment and sentence has been stayed pending said appeal in the Supreme Court of the United States:

Now, therefore, if the Supreme Court of the United States shall affirm said judgment and said Daniel A. Bucklin shall appear for the execution of said sentence and shall obey all orders and directions of said Supreme Court or of the district court of Kan-
100 sas within and for the district of Kansas, then this bond to be null and void; otherwise to remain in full force and effect.

In witness whereof we have hereunto set our hands and seals this — day of ——, A. D. 1893.

[SEAL.] DANIEL A. BUCKLIN.
[SEAL.] MARY BUCKLIN.
[SEAL.] ELMINA STEWART.

Approved by me this the 16th day of May, A. D. 1893.
Approved May 16, 1893.

JNO. A. WILLIAMS,
U. S. Dist. Judge.

UNITED STATES OF AMERICA, } ss:
District of Kansas, }

I, the undersigned, surety on the within undertaking, do solemnly swear that I am a resident of the State of Kansas, and that I am worth six thousand dollars over and above all exemptions, debts, and liabilities, consisting of real estate, first-mortgage bonds on real estate, and Hudson River railroad bonds, so help me God.

MARY A. BUCKLIN.

Subscribed and sworn to before me this — day of May, A. D. 1893.

[SEAL.] R. J. CANNELL,
Notary Public.

Com. Oct. 14th, 1894.

101 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

I, the undersigned, surety on the within undertaking, do solemnly swear that I am a resident of the State of Kansas, and that I am worth six thousand dollars over and above all exemptions, debts, and liabilities, consisting of twenty-five hundred dollars in Hudson River railroad bonds and the balance in first-mortgage real-estate bonds on New York real estate, so help me God.

ELMINA STEWART.

Subscribed and sworn to before me this — day of ——, A. D. 1893.

[SEAL.] R. J. CANNELL,
Notary Public.

Com. expires Oct. 14, 1894.

Endorsed: No. 63. United States of America *vs.* Daniel A. Bucklin. Bond in appeal as approved by Judge John A. Williams. Filed May 20th, 1893. J. C. Wilson, cl'k, by J. F. Shearman, D. C.

102 UNITED STATES OF AMERICA, } ss:
District of Kansas, }

In the District Court of the United States in and for the Second Division of the District of Kansas.

UNITED STATES, Plaintiff, }
vs.
DANIEL A. BUCKLIN, Defendant. }

Now, on this 16 day of May, A. D. 1893, at chambers, and during a recess of the March, 1893, term of the above-named court, comes Daniel A. Bucklin, defendant in the above cause, and presents to the undersigned judge his petition for an appeal to the Supreme Court of the United States from a judgment of conviction on a charge of perjury in said above court, and, said petition having

been duly considered, it is ordered that said appeal be allowed to the Supreme Court of the United States, and that a copy of the records and proceedings in said cause, with all things concerning the same, under the seal of the above court, together with this order, be filed within thirty days from this date in the office of the clerk of the Supreme Court of the United States, to the end that, the records and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein what of right and according to the laws and customs of the United States should be done; and the said Daniel A. Bucklin having entered into a bond to the United States in the sum of two thousand dollars, with Mary Bucklin and Elmina Stewart as surety, which bond is hereby approved.—

103 It is ordered that execution of the judgment and sentence in said above cause against said Daniel A. Bucklin be stayed, pending said appeal in the Supreme Court of the United States and until the further order of the above court.

Witness my hand this 16 day of May, A. D. 1893.

JNO. A. WILLIAMS,
U. S. Dist. Judge.

Endorsed: No. 63. United States, pl'ff, *vs.* Daniel A. Bucklin, def't. Order of Judge Williams allowing appeal and approving bond. Filed May 20th, 1893. J. C. Wilson, cl'k, by J. F. Shearman, D. C. Davidson & Williams, att'ys for def't.

104 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, Second Division, }

I, J. C. Wilson, clerk of the district court of the United States for the district of Kansas, do hereby certify the foregoing to be a full and complete transcript from the records of the court and from the papers filed in the case of the United States *vs.* Daniel A. Bucklin as the same now appear of record and on file in my office.

Seal of the District Court of the United States, Second Division, District of Kansas, 1890.

In witness whereof I have hereunto subscribed my name and affixed the seal of said district court, at my office, in the city of Wichita, this 7th day of June, A. D. 1893.

J. C. WILSON, *Clerk,*
By J. F. SHEARMAN, *Deputy.*

Endorsed on cover: Case No. 15,343. Kansas D. C. U. S. Term No., 959. Daniel A. Bucklin, appellant, *vs.* The United States. Filed July 3rd, 1893.